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10/014,687	12/11/2001	Anthony Earle	81444F-P	3189

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EXAMINER

NICOLAS, FREDERICK C

ART UNIT	PAPER NUMBER
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3754

DATE MAILED: 11/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/014,687

Applicant(s)

EARLE ET AL.

Examiner

Frederick C. Nicolas

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-18, 20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) 4, 8, 12, 15, 17 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-7, 9-11, 13, 14, 16, 20 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-18, 20 and 21 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/3/2003 has been entered.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claimed subject matter "a processing apparatus" as recited in claim 1, line 2, in claim 10, line 2, and the claimed subject matter in claim 7, lines 1-2, "wherein the container is punctured as it fitted onto the processing apparatus" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2,9-10,20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Popp et al. 5,443,181.

With respect to claims 10 and 20-21, Popp et al. disclose a delivery unit for supplying low viscosity processing solution to a processing apparatus (col. 3, ll. 65-68 onto col. 4, ll. 1-12), which comprises a foil storage container (4) having a nozzle see Figure 2 for location at one end thereof, and incorporating a piston (5a) therein, and means for activating the piston (6) such that a variable fixed amount of solution is delivered out of the container via the nozzle each time the piston is activated as seen in Figures 2-4.

The device of Popp et al. will perform the method recited in claims 1-2 and 9 during normal operational use of the device.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-2,5,7,9-10,13,20,21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor et al. (EP0354663) in view of Sartain 4,323,176.

With respect to claims 10, 20 and 21, Taylor et al. disclose a delivery unit for supplying low viscosity processing solution to a processing apparatus as seen in Figure

1, which comprises a polypropylene storage container (1) having a nozzle (5) at one end thereof, and incorporating a piston (4) therein, and means for activating the piston (24 and 25). Taylor et al. lack that a variable fixed amount of solution is delivered out of container. Sartain shows a container (14) with a piston (44), a nozzle (18), and having means for activating the piston such that a variable fixed amount of solution is delivered out of the container via the nozzle each time the piston is activated (col. 3, ll. 39-68 onto col. 4, ll. 1-36).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the means for activating the piston of Taylor et al. with Sartain's casing assembly (16) including the ratchet actuating sub-assembly, in order to provide a dispenser which can be easily modified to dispense varying discrete amounts of a product in dependence upon the need of a user, as taught by Sartain (col. 2, ll. 54-57).

With respect to claim 13, Taylor et al. disclose that the front end of the piston is shaped to fit exactly into the nozzle as seen in Figure 1.

The device of Taylor et al-Sartain in combination will perform the method recited in claims 1-2,5,7 and 9 during normal operational use of the device.

7. Claims 1-3,5-7,9-10, 14,16,20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor et al. (EP0354663) in view of Bristow 4,406,654.

With respect to claims 10, 14, 16, 20 and 21, Taylor et al. disclose a delivery unit for supplying low viscosity processing solution to a processing apparatus as seen in Figure 1, which comprises a polypropylene storage container (1) having a nozzle (5) at

one end thereof, and incorporating a piston (4) therein, and means for activating the piston (24 and 25). Taylor et al. lack that a variable fixed amount of solution is delivered out of container. Bristow teaches the use of activating a piston of a cartridge such that a variable fixed amount of solution is delivered out of the cartridge (col. 2, ll. 6-23 and col. 3, ll. 21-65), the activation means comprises a rod (12) for pushing the piston, the rod being in connection with a clutch plate (16) activated by a cam (25).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the means for activating the piston of Taylor et al. with Bristow's feeding device as shown in Figure 1, in order to provide a dispenser in which the size of the dosages increases in relation to increases of the dose setting numbers, as taught by Bristow (col. 3, ll. 62-63).

The device of Taylor et al-Bristow in combination will perform the method recited in claims 1-3,5-7 and 9 during normal operational use of the device.

8. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor et al. 0354663 A2 in view Sartain 4,323,176 as applied to claims 10, and further in view of Hoffmann et al. 4,522,316.

Taylor et al-Sartain in combination has taught all the features of the claimed invention except that a plastic seal is provided behind the piston portion. Hoffmann et al. teach the use of a plastic seal 6 behind a piston 2 of a storage container 1.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the plastic seal of Hoffmann et al. onto the invention of

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Taylor et al. as such, in order to prevent dirt from entering behind the piston, as taught by Hoffmann et al. (col. 4, ll. 40-42).

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Herold 4,189,065, Kern 6,640,998, Devaney et al. 4,121,739, Cech 4,364,388, Creighton, Jr. et al. and Watson 4,269,331 disclose other types of delivery unit.

### ***Response to Arguments***

10. Applicant's arguments filed 6/26/2003 have been fully considered but they are moot in view of the new grounds of rejection.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (703)-305-6385. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mancene L. Gene, can be reached on (703)-308-2696. The fax phone number for the organization where this application or proceeding is assigned is (703)-872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-0861.

FN  
November 18, 2003

 11/18/03  
Frederick C. Nicolas  
Patent Examiner  
Art Unit 3754